127-719

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 244.

J. HAIRSTON SEAWALL ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB M. HAYMAKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JULY 13, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 244.

J. HAIRSTON SEAWALL ET AL., PLAINTIFFS IN ERROR,

vs.

JACOB M. HAYMAKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Caption	1	1
Petition	3	1
Summons	10	4
Marshal's return	11	4
Order granting leave to answer	12	4
Order extending time to answer	13	5
Answer	14	5
Order substituting parties	17	6
Hearing before jury commenced	18	6
Verdict	19	6
Motion for new trial	19	7
Judgment	20	7
Bill of exceptions	23	8
Exhibit A—Certified copy of patent to Wm. Green Munford, November 14, 1822	28	10
B—Certified copy of deed of John Sinclair *et ux.* to Cary S. Jones, September 10, 1837	33	11
Bond	41	14
Writ of error	43	15
Citation	44	16
Proof of service of citation	44½	16
Clerk's certificate	45	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 11, 1887.

1 At a stated term of the circuit court of the United States of America in the sixth judicial circuit and the western division of the southern district of Ohio, begun and held at the United States court-rooms, in the city of Cincinnati, in the division and district aforesaid, on the first Tuesday of February, being also the third day of that month, in the year of our Lord one thousand eight hundred and eighty-five, and in the one hundred and ninth year of the Independence of the United States of America—present, the Honorable George R. Sage, one of the judges—among the proceedings had were the following, to wit:

MARY M. TALIAFERO and THOMAS TALIAFERO, Her Husband; John Sinclair, Robert Sinclair; Margaret Ann Leigh and John H. Leigh, Her Husband; Thomas B. Booth, Ellen D. Booth, Elva M. Booth, John Sinclair Booth, Nannie W. Booth, Robert M. Booth, and Mary L. Collett, a Minor of the Age of Six Years, Who Sues
2 by Her Next Friend, David Mulford, and William Catlett, Plaintiffs,

vs.

JACOB M. HAYMAKER, Defendant. } 2412.

Civil action.

Be it remembered that heretofore, to wit, on the sixth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, came the said plaintiffs herein, by Samuel R. Matthews and Matthews, Ramsey and Matthews, their attorneys, and filed in the clerk's office of the court aforesaid in this cause their certain petition, clothed in the words and figures as follows, to wit:

3 *Petition.*

In the Circuit Court of the United States within and for the Southern District of Ohio.

MARY M. TALIAFERO and THOMAS B. TALIAFERO, Her Husband; John Sinclair, Robert Sinclair; Margaret Ann Leigh and John H. Leigh, Her Husband; Thomas B. Booth, Ellen D. Booth, Elva M. Booth, John Sinclair Booth, Nannie W. Booth, Robert M. Booth, and Mary L. Collett, a Minor of the Age of Six Years, Who Sues by Her Next Friend, David Mulford, and William Collett, Plaintiffs,

against

JACOB M. HAYMAKER, Defendant.

The plaintiffs, Mary M. Taliafero and Thomas B. Taliafero, her husband; John Sinclair, Robert Sinclair; Margaret Ann Leigh
4 and John H. Leigh, her husband; Thomas B. Booth, Ellen D. Booth, Elva M. Booth, John Sinclair Booth, Nannie W. Booth, Robert M. Booth, and Mary L. Catlett, an infant of the age of six years, who sues by her next friend, David Mulford, and Wil-

liam Catlett, all residents of the State of Virginia and citizens thereof, complains of the said defendant, Jacob M. Haymaker, a resident of the State of Ohio and of the said southern district of Ohio and a citizen thereof, and say—

1st. That the said Maria M. Taliafero, John Sinclair, Robert Sinclair, Margaret Ann Leigh, Thomas B. Booth, Ellen D. Booth, Elva M. Booth, John Sinclair Booth, Nannie W. Booth, Robert M. Booth, and Mary L. Catlett, an infant, are seized in fee-simple and the said William Catlett is seized of an estate of freehold for his wife, tenant by the curtesy as husband, surviving his wife, Maria Louisa Catlett, d'c'd, mother of said Mary L. Catlett, as to the undivided
5 interest which was in the said Maria Louisa of, in, and to forty-two equal undivided one-hundredth parts of the land described as follows, to wit:

All that piece or parcel of ground situate, lying, and being in Fayette county, in said State of Ohio and in the said southern district of Ohio, being a part of survey No. 6538, of 437 acres, made in the name of Edward Stubblefield, beginning at the northeast corner of survey No. 6538, for 120 acres, in the name of Edward Stubblefield, thence west with the north line of said last-named survey to the northwest corner thereof; thence south twenty (20°) degrees east two hundred and twenty (220) poles, more or less, to the southwest corner of said last-named survey; thence west with the south line of the said first-named survey of 437 acres forty-three $\frac{2}{10}$ (43.2) poles to Jane Hays' southeast corner; thence north eighteen and a half ($18\frac{1}{2}$°) degrees west fifty-two (52) poles to another corner of Jane Hays; thence north sixty (60°) degrees west twenty-four (24) poles to another
6 corner of Jane Hays; thence west with the north line of Jane Hays (109) one hundred and nine poles to the west line of the survey of 437 acres; thence with the said west line of said survey of 437 acres north six (6°) degrees west two hundred and thirty-two $\frac{80}{100}$ (232.80) poles, more or less, to the southwest corner of Michael Klebber's land in same survey; thence with said Klebber's south line two hundred and three $\frac{80}{100}$ (203.80) poles, more or less, to the east line of said survey of 437 acres, said Klebber's southeast corner; thence south twenty (20°) degrees west one hundred and eighteen (118) poles to the northeast corner of said survey of 120 acres, the place of beginning, containing two hundred and ninety-two (292) acres, more or less.

2. That the plaintiffs are entitled to the immediate possession thereof.

3. That the said forty-two equal undivided one-hundredth parts of said lands are exclusive of costs of greater value than five
7 hundred dollars.

4. That the said defendant is in possession of the same.

5. That the said defendant withholds the possession of the same from these plaintiffs.

6. That such withholding of the said possession from the plaintiffs is unlawful and wrongful.

Wherefore the plaintiffs ask judgment against the said defendant for the recovery of the possession of the said forty-two (42) equal undivided parts of the said lands and costs.

SAMUEL R. MATTHEWS,
MATTHEWS, RAMSEY & MATTHEWS,
Att'ys of Plaintiffs.

THE STATE OF OHIO, } ss:
Hamilton County, }

David Mulford, of lawful —, being duly sworn, says he is agent in this behalf for the above-named plaintiffs, who are all non-
8 residents of and absent from this State, and that he believes the facts stated in the foregoing petition to be true.

D. MULFORD.

Signed in my presence and sworn to before me this 6th day of February, A. D. 1877.

THOS. AMBROSE,
Clerk U. S. Cir. C't, S. D. O.

9 I hereby acknowledge myself security for costs in this action, and I also hereby agree to appear and, as next friend of Mary L. Catlett, an infant, to prosecute this action on her behalf.

Cin'ti, O., Feb'y 6, 1877.

D. MULFORD.

Precipe.

Issue summons for defendant (see names within) in an action for the recovery of the possession of specific real estate, returnable according to law.

SAMUEL R. MATTHEWS &
MATTHEWS, RAMSEY & MATTHEWS,
Pl't'ffs' Att'ys.

Thos. Ambrose, clerk.

[Endorsed:] 2412. U. S. circuit court, southern dist. of Ohio. Mary M. Taliafero *et als. v.* Jacob M. Haymaker. Petition. Filed February 6th, 1877. Thos. Ambrose, clerk. Sam'l R. Matthews and Matthews, Ramsey & Matthews, pl't'ffs' att'ys.

10 And thereupon, afterward, but on the same day as last aforesaid, to wit, on the said the sixth day of February, in the year last aforesaid, there was issued out of the clerk's office of the court aforesaid in this cause our certain writ of summons, directed to the marshal of the United States within and for the district aforesaid and against the said defendant herein, the said Jacob M. Haymaker as aforesaid, and which said summons so as aforesaid issued and directed is clothed in the words and figures as follows, to wit:

Summons.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Jacob M. Haymaker, citizen of and resident in the State of Ohio, if he be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the third Tuesday in the month of February, 1877, to answer unto
11 Mary M. Talliafero and Thomas B. Taliafero, her husband, citizens of and resident in the State of Ohio, in an action for the recovery of the possession of specific real estate.

And have you then and there this writ.

Witness the Honorable M. R. Waite, Chief Justice of the United States, this 6th day of February, A. D. 1877, and in the 101 year of the Independence of the United States of America.

Attest: [L. S.] THOMAS AMBROSE, *Clerk.*

And afterward, to wit, on the fourteenth day of February, in the year last aforesaid, came the said marshal of the district aforesaid, to whom the said the foregoing summons against the said defendant aforesaid was so as aforesaid in form directed, and returned the same into the clerk's office of the court aforesaid, with his proceedings thereon endorsed in the words and figures clothed as follows, to wit:

Marshal's Return.

Rec'd this writ at Cincinnati on the 7th day of February, 1877, and served the same in Fayette Co., O., as follows, to wit: Personally served Jacob M. Haymaker by delivering to him a true copy of this writ Feb. 12th, 1877.

12 (Signed) W. R. THRALL,
U. S. Marshal,
By S. F. WOOKER,
Dep'ty Marshal.

Summons endorsed: D. Mulford, security for costs. Civil action for the recovery of specific real estate.

And afterward, to wit, on the twentieth day of February, in the year last aforesaid, an entry was made upon the journal of the court aforesaid in this cause, and which said entry so as aforesaid made is clothed in the words and figures as follows, to wit:

Leave to Answer. Journal Entry, R. 407.

MARY M. TALIAFERRO *et al.*
vs. } 2412.
JACOB M. HAYMAKER.

Real property.

On motion to the court and by consent of parties leave is given the above-named defendants to answer by the 15th of April, 1877.

And afterward, to wit, on the thirteenth day of April, in the year last aforesaid, an entry was made upon the journal of the court aforesaid in this cause, and which said journal entry so as
13 aforesaid made is clothed in the words and figures as follows, to wit:

Leave to Answer. Journal Entry, R. 464.

MARY M. TALIAFERRO *et al.*
vs.
JACOB M. HAYMAKER. } 2412.

Real property.

On motion to the court it is ordered that the time for answer in the above case be, and is hereby, extended to sixty days from the date of this entry.

And afterward, to wit, on the eleventh day of June, in the year of our Lord one thousand eight hundred and seventy-seven, came the said defendant herein, the said Jacob M. Haymaker as aforesaid, by Mills Gardner, his attorney, and filed in the clerk's office of the court aforesaid in this cause his certain answer in the words and figures clothed as follows, to wit:

14 *Answer.*

The Circuit Court of the United States for the Southern District of Ohio.

MARY M. TALIFERRO and THOMAS B. TALIFERRO, Her Husband; John Sinclair, Robert Sinclair; Margaret Ann Leigh and John Leigh, Her Husband; Thomas B. Booth, Ellen D. Booth, Elva M. Booth, John Sinclair Booth, Nannie W. Booth, Robert M. Booth, Mary S. Collett, an Infant, Who Sues by Her Next Friend, David Mumford, and William Collett, Plaintiffs,

against

J. M. HAYMAKER, Defendant.

The said defendant, Jacob M. Haymaker, answering the petition of the said plaintiffs, denies that said plaintiffs or either of them have any estate, title, or interest in or to the lands described in said petition or any part thereof, and he denies that said plaintiffs or either of them are entitled to the possession of said lands or any part thereof.

15 And he denies that he unlawfully or wrongfully withholds the possession of said lands or any part thereof.

Second. And said defendant, further answering, says that no cause of action has accrued to said plaintiffs or either of them against said defendant within 21 years before the filing of plaintiffs' petition herein.

Wherefore this defendant asks to go hence and recover his costs of said plaintiffs.

By MILLS GARDNER,
Attorney for Defendant.

16 THE STATE OF OHIO, } ss:
Fayette County, }

Jacob M. Haymaker, the defendant, being sworn, says the denials and facts stated and allegations contained in his foregoing answer are true, as he believes.

J. M. HAYMAKER.

Signed in my presence and sworn to before me by said Jacob M. Haymaker this April 4th, A. D. 1877.

W. H. DIAL,
Notary Public.

Notary fees, 25c., paid by defendant.

17 And afterward, to wit, on the nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-eight, an entry was made upon the journal of the court aforesaid in this cause in the words and figures as follows, to wit:

Order. Journal Entry, S. 143.

MARY M. TALIAFERRO *et al.* } 2412.
vs.
JACOB M. HAYMAKER. }

Real property.

On motion and by consent of parties it is by the court ordered that J. Hairston Seawell, a citizen and resident of the State of Virginia, be, and he hereby is, substituted plaintiff in this action in the place and stead of Mary M. Taliaferro and Thomas B. Taliaferro, her husband; John Sinclair, Robert Sinclair Margaret Ann Leigh; and John H. Leigh, her husband; Thomas B. Booth, Ellen D. Booth, and Elva M. Booth, who are hereby hence dismissed, and that this action proceed in the name of the said Seawell in all respects as if the same had been originally brought by him.

18 And afterward, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and eighty-five, an entry was made upon the journal of the court aforesaid in this cause, and which said entry so as aforesaid made is clothed in the words and figures as follows, to wit:

Journal Entry, W. 35.

J. HAIRSTON SEWELL *et al.* } 2412.
vs.
JACOB M. HAYMAKER. }

Money.

This day came the parties, by their attorneys, and thereupon, to try the issues joined, a jury, being called, came, to wit, George S. Stevens, Martin Shewman, Harrison Hart, George F. Ireland, John F. Law, Elias Favorite, Bernard Mescher, James S. Elliott, George

Norman, Azel B. Smith, William Woods, and Harry Hews, who were duly empanneled and sworn well and truly to try the issues joined between the parties, and, the testimony not being finished, the court respited the jury until to-morrow morning at ten o'clock, to which time this cause is continued.

And afterward, to wit, on the fourth day of February, in the year of our Lord one thousand eight hundred and eighty-five, an entry was made upon the journal of the court aforesaid in this cause in the words and figures as follows, to wit:

19 *Journal Entry, W.* 38.

J. HAIRSTON SEWELL *et al.*
vs. } 2412.
JACOB M. HAYMAKER.

Money.

This day came again the parties, by their attorneys, and also the jurors heretofore empanneled and sworn herein, who, having heard the evidence and the charge of the court, upon their oaths do find the issues joined to be in favor of the defendant.

Whereupon the plaintiffs, by their attorneys, gave notice of a motion for a new trial.

And afterward, to wit, on the fifth day of February, in the year last aforesaid, came the plaintiffs herein aforesaid, by their attorneys as aforesaid, and filed in the clerk's office of the court aforesaid in this cause their certain motion for a new trial, and which said motion so as aforesaid filed is clothed in the words and figures as follows, to wit:

Motion for a New Trial.

In the Circuit Court of the United States, Southern District of Ohio, Western Division.

J. HAIRSTEN SEAWELL, JOHN SINCLAIR BOOTH, NANNIE W. Booth, Robert M. Booth, and Mary L. Catlett, a
20 Minor of the Age of Six Years, Who Sues by Her Next Friend, David Mulford, and William Catlett, Plaintiffs, } 2412.

vs.

JACOB M. HAYMAKER, Defendant.

Now come the plaintiffs herein and moves the court to set aside the verdict rendered herein and grant a new trial for the following reasons:

1. Error in the charge of the court.

2. Error of the court in refusing to grant the motion of the plaintiff- to strike out the deed of John Sinclair and wife to Cary Jones offerred in evidence at the trial.

MATTHEWS & SHOEMAKER,
Attorneys for Plaintiffs.

And afterward, to wit, on the sixth day of April, in the year last aforesaid, an entry was made upon the journal of the court aforesaid in the words and figures following, to wit:

Journal Entry, W. 84.

J. HAIRSTEN SEAWELL, JOHN SINCLAIR BOOTH, NANNIE W. Booth, Robert M. Booth, and Mary L. Catlett, a Minor of the Age of Six Years, Who Sues by Her Next Friend,
21 David Mulford, and William Catlett, Plaintiffs, } 2412.
vs.
JACOB M. HAYMAKER, Defendant.

Money.

This cause coming on for hearing on plaintiffs' motion for a new trial, the court, being duly advised in the premises, finds that said motion should be, and the same is hereby, overruled, to which plaintiffs except.

Wherefore it is considered by the court that the plaintiffs take nothing by their said suit, and that the defendants go hence without day and recover his costs, taxed at $—, against the plaintiffs, and execution is awarded therefor.

Thereupon come the plaintiffs and tender their bill of exceptions, and, upon their application, the same is signed, sealed, allowed, and ordered to be made part of the record. Upon further application of the *of the* plaintiffs execution is stayed for 60 days, and bond is fixed at the amount of $500.00.

And thereupon, to wit, on the same day and year as last aforesaid, the plaintiffs aforesaid herein, by their attorneys aforesaid, filed in the clerk's office of the court aforesaid in this cause their
22 certain bill of exceptions in this cause, and which said bill of exceptions so as aforesaid filed is clothed in the words and figures as follows, to wit:

23 *Bill of Exceptions.*

In the Circuit Court of the United States, Southern District —, Western Division.

J. HAIRSTON SEAWELL, JOHN SINCLAIR BOOTH, NANNIE W. Booth, Robert M. Booth, and Mary L. Catlett, a Minor of the Age of Six Years, Who Sues by Her Next Friend, David Mulford, and William Catlett, Plaintiffs, } No. 2412.
vs.
JACOB M. HAYMAKER, Defendant.

Be it remembered that this cause came on for trial before the Honorable George R. Sage, judge of the district court of the United States for the southern district of Ohio, western division thereof, in the sixth circuit, sitting as a circuit judge, and holding a term of

the circuit court, to wit, the February term, 1885, in said circuit, district, and division, at Cincinnati, and a jury.

24 The plaintiffs, to maintain the issue on their part, offered in evidence a patent of the United States Government, a copy of which is hereto attached, marked Exhibit A, and made a part hereof, and evidence tending to prove that the only heirs of William Green Munford, the grantee named in said patent, who died intestate, were Robert, John, Stanhope, William Green, Elizabeth, and Mary, and that Stanhope, William Green, and Elizabeth died young, unmarried, childless, and intestate, somewhere in the early part of the present century, and the three others named inherited the said lands in equal shares from said William Green Munford; that Margaret Ann Munford was the only heir of the above-named Robert Munford, who died intestate, and that said Margaret Ann Munford was born in the year 1800, and in the year 1819 married one John Sinclair, and died on the 13th day of September, 1837, having inherited one-third of the property described in the petition, and that John Sinclair, her husband, died on the 3rd day of

25 August, 1875, and that the original plaintiffs are the only heirs of the said Margaret Ann Sinclair, who died intestate.

The plaintiff- offered evidence further to prove that J. Hairston Seawell is the grantee of certain of the original plaintiffs for whom he has been substituted as a party plaintiff.

And here the plaintiffs rested.

The defendant, to maintain the issues on his part, thereupon offered in evidence a certain deed, purporting to be a conveyance of the interest of John Sinclair and Margaret Ann Sinclair, his wife, in the survey or warrant of which the land described in the petition is a part to one Cary S. Jones; that the plaintiffs objected to the admission of said conveyance in evidence because it was not a sufficient and valid deed to convey the interest of Margaret Ann Sinclair, for the reason that the deed was not acknowledged or proven by John Sinclair until after the death of his wife, and was therefore not valid either under the

26 laws of Virginia, where it was executed, or of Ohio, where the land lay; which said objection was overruled, to which plaintiffs excepted, and said deed was admitted in evidence, and a copy thereof is hereto attached, made part hereof, and marked Exhibit B.

And thereupon the defendant, to further maintain the issue on his part, offered in evidence deeds conveying whatever title said Cary S. Jones had to the present defendant.

And defendant admitted that he was, at the commencement of this suit and still is, in possession of the premises described in the petition.

And here the defendant rested.

Thereupon the plaintiffs offered no further evidence, and the court proceeded to charge the jury that the deed marked Exhibit B was a valid deed and conveyed all of the interest of Mrs. Margaret Ann Sinclair in the lands described in it to the said Cary S. Jones, and that

the defendant by the subsequent conveyances had become the
27 grantee of that title, and that the verdict should therefore be for the defendant.

Thereupon the plaintiffs excepted to that part of the charge wherein the court charged the jury that said deed, Exhibit B, was a good and valid deed to convey the title of Mrs. Margaret Ann Sinclair, and also to that part of the charge directing them to bring in a verdict for the defendant.

And thereupon the jury brought in a verdict for the defendant.

Wherefore the plaintiffs prayed the court to sign, seal, and allow this their bill of exceptions and to make the same part of the record of the cause; all of which is accordingly done.

[SEAL.] GEO. R. SAGE,
U. S. District Judge, Southern District of Ohio, Sitting as Circuit Judge upon the Trial of the Above-Entitled Action.

28 EXHIBIT A.

H. F. C. L.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *August* 23, 1873.

In accordance with the seventh section of the act of Congress approved the 4th of July, 1836, entitled "An act to reorganize the General Land Office," and with the act of Congress approved the 3rd of March, 1843, entitled "An act in relation to the exemplifications of the records of land patents and other evidences of title, and amendatory of the act entitled 'An act to reorganize the General Land Office,'" I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of page 439, vol. 9, of the Record of Virginia Military Patents in this office.

The record of the patent in this case, of which the annexed is a literal exemplification as aforesaid, was omitted to be signed as required by law, as appears from the record of the same in this
29 office, but the 1st section of the act of March 3, 1843, above referred to, provides that "Where such exemplifications are adduced in evidence they shall be deemed and held to be of the same validity in all proceedings, whether at law or in equity, as if the names of the officers signing and countersigning the same had been fully inserted in such record."

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year first above written.

[SEAL.] WILLIS DRUMMOND,
Commissioner of the General Land Office.

30 J. Monroe, President of the United States of America, to all to whom these presents shall come, Greeting:

Know ye "that, in consideration of military service performed by William Green Munford, a colonel for the war, to the United States

in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States passed on the 10th day of August, in the year 1790, instituted 'An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto,' and other acts of the said Congress amendatory of the said act, there is granted by the United States unto the legal heirs and representatives of said William G. Munford a certain tract of land, containing four hundred and thirty-seven acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the
31 15th day of December, in the year one thousand eight hundred and twenty, and bounded and described as follows, to wit: Survey of 437 acres of land on part of a military warrant, No. 5743, on the waters of Paint creek, beginning at two bur-oaks, southwesterly corner to Stubblefield's survey, No. 6538, of 120 acres, in the line of Wm. Eustace's survey, No. 3648; thence with the line of the 120-acre survey N. 20 W. 217 poles, crossing a small branch, to two hickories and a black oak, northwest corner thereof; thence with another line of the same east 97 poles to a stake in the line of Thomas Hoff's survey, No. 3704; thence with said line N. 20 W. 212 poles, crossing a branch, to a stake; thence S. 80¼ W. 180 poles, crossing a branch, to two bur-oaks and an elm; thence S. 5½ E. 376 poles to a stake in Eustace's line; thence with said line east 182 poles with the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said legal heirs and representatives and their heirs
32 and assigns forever as tenants in common and not against tenants.

"In witness whereof the said J. Monroe, President of the United States of America, hath caused the seal of the General Land Office to be hereunto affixed and signed the same with his hand, at the city of Washington, the 14th day of Nov., in the year of our Lord one thousand eight hundred and twenty-two, and of the Independence of the United States of America the 47th.

"By the President, J. M.:

"[L. S.] J. McLEAN,

"*Commissioner of the General Land Office.*"

33 EXHIBIT B.

OFFICE OF RECORDER OF DEEDS, &C.,
WASHINGTON C. H., FAYETTE CO., OHIO.

I, Z. W. Hagler, recorder of deeds, &c., for Fayette Co., Ohio, do hereby certify that the following attached papers, viz., a deed from John and Margaret A. Sinclair to Cary S. Jones, found of record in volume "M," page 346, and a deed from Cary S. Jones to John Sinclair, found of record in volume "M," page 350, of the deed record in this office, are correct transcripts from said record.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 17th day of December, A. D. 1880.

[SEAL.] Z. W. HAGLER,
Recorder of Fayette Co., Ohio.

34 *Deed.*

John Sinclair & wife to Cary S. Jones.

M. 346.

This indenture, made the 10th day of Sept'r, in the year eighteen hundred and thirty-seven, between John Sinclair and Margaret Ann, his wife, of the county of Gloucester and State of Virginia, of the one part, and Cary S. Jones, of said county of Gloucester and State aforesaid, of the other part, witnesseth: That the said Jno. Sinclair and Margaret Ann, his wife, in consideration of five dollars of lawful money of this Commonwealth to them in hand paid by the said Cary S. Jones at or before the unsealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do and each of them doth bargain and sell, unto the said Cary S. Jones, his heirs and assigns, a certain tract or parcel of land lying and being on the east fork of Paint creek, in the county of Fayette, in the State of Ohio, containing four hundred acres of land, be the same more or less, and bounded,
35 as per patent from the General Land Office of the United States granted to the heirs and legal representatives of Col. Wm. Green Munford, dec'd, for his services during the Revolutionary war; likewise the portion of said John Sinclair and Margaret, his wife, of another tract or parcel of land in the county —— and State of Ohio, and bounded likewise, as per patent from the General Land Office of the United States and now in the hands of Matthew Bonner, as agent for John Sinclair, in the State of Ohio. Both of said tracts or parcels of land came into possession of said Jno. Sinclair by his marriage with the said Margaret Ann, who is the only surviving child of Rob't Munford, dec'd, who was the eldest son of said William Green Munford, dec'd; together with all the hereditaments and appurtenances whatsoever to the said Cary S. Jones belonging or appertaining or with the same uses and enjoyed or accepted, reputed, taken, or known as part, parcels, or
36 member thereof or belonging to the same or any part thereof, and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof and of every part and parcel thereof:

To have and to hold the said tracts or parcels of land, with the tenements, hereditaments, and all and singular other the premises hereinbefore mentioned or intended to be bargained and sold and every part and parcel thereof, with every of their rights, members, and appurtenances, unto the said Cary S. Jones, his heirs and as, signs, forever, to and for the only proper use and behoof of him-the said Cary S. Jones, and his heirs forever; and the said John Sinclair and Margaret Ann, his wife, for themselves and their heirs,

the said tracts or parcels of land, with all and singular the premises and appurtenances before mentioned, unto the said Cary S. Jones, his heirs and assigns, free from the claim or claims of them, the said John Sinclair and Margaret Ann, his wife, or either of
37 them thereof, either of their heirs, and of all and of every person or persons whatsoever shall, will, and do warrant and forever defend by these presents.

In witness whereof the said Jno. Sinclair and Margaret Ann, his wife, have hereunto set their hands and seals the day and year above written.

JNO. SINCLAIR. [SEAL.]
MARGARET A. SINCLAIR. [SEAL.]

Signed, sealed, and delivered in presence of—

WM. ROBINS.
RICHARD S. JONES.
PET. R. NELSON.

GLOUCESTER COUNTY, *To wit:*

We, William Robins and Peyton R. Nelson, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Margaret Ann Sinclair, the wife of John Sinclair, parties to a certain deed bearing date on the 10th of September, 1837, and hereunto annexed, personally appeared before us, in our county
38 aforesaid, and, being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Margaret Ann Sinclair, acknowledged the same to be her voluntary act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 10th day of September, 1837.

WM. ROBINS. [SEAL.]
PET. R. NELSON. [SEAL.]

STATE OF VIRGINIA, *Gloucester County,* } *To wit:*

We, Wm. Robins — Thomas Smith, justices of the peace in the county and State aforesaid, do hereby certify that John Sinclair, a party to a certain deed bearing date the 10th day of September, 1837, and hereunto annexed, personally appeared before us in our own county aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgement to the clerk
39 of the counties of ——, in the State of Ohio, in order that the said deed may be recorded.

Given under our hands and seals this 14th of May, 1840.

WM. ROBINS. [SEAL.]
THOMAS SMITH. [SEAL.]

STATE OF VIRGINIA, *Gloucester County,* } *To wit:*

I, John R. Cary, clerk of the court of the county aforesaid, in the State aforesaid, do hereby certify that Wm. Robins and Thomas Smith and Peyton R. Nelson, Esquires, whose names and seals are affixed to the within certificates of acknowledgements, were, at the time of subscribing the same, justices of the peace in and for the county aforesaid, duly commissioned and qualified, and that due faith and credit may and ought to be given to all their acts as such.

In testimony whereof I have hereunto subscribed my name as clerk aforesaid and affixed the seal of the said county this 14th day of May, 1840, in the 64th year of the Commonwealth.

[L. S.] JOHN R. CARY, *C. G. C.*

40 STATE OF VIRGINIA, *Gloucester County,* } *To wit:*

I, Wm. Robbins, presiding justice of the court of the county aforesaid, do hereby certify that John R. Cary, who has given the certificate below, is clerk of the said court, and that his attestation is in due form.

Given under my hand this 14th day of May, 1840.

WM. ROBINS, SEN'R. [SEAL.]

41 And afterward, to wit, on the fourteenth day of May, in the year last aforesaid, the plaintiffs aforesaid herein, by their attorney aforesaid, filed in the clerk's office of the court aforesaid in this cause their certain error bond in the words and figures clothed as follows, to wit:

Error Bond.

Circuit Court of the United States, Southern District of Ohio, W. D.

MARY M. TALIAFERRO *et al. vs.* JACOB M. HAYMAKER.

Know all men by these presents that we, J. Hairston Seawell and others, as principals, and David Mulford, as surety, are held and firmly bound unto Jacob M. Haymaker in the sum of five hundred dollars, to be paid to the said Jacob M. Haymaker, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 14th day of May, 1885.

42 Whereas the above-named J. Hairston Seawell and others have taken out a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named J. Hairston Seawell and others shall prosecute their

said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) DAVID MULFORD. [SEAL.]

Sealed and delivered in presence of—

SAM'L G. McMILLIN.
C. R. NEVIN.

The above security is approved.

GEORGE R. SAGE,
District Judge of the United States, S. D. Ohio,
Sitting as Circuit Judge.

And afterward, to wit, on the same day and year as last aforesaid, there was issued out of the clerk's office of the court aforesaid our certain writ of error in this cause, hereto annexed next following, to wit:

43 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Ohio, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between J. Hairston Seawall and others and Jacob M. Haymaker, a manifest error hath happened, to the great damage of the said J. Hairston Seawall *et al.*, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 14th day of May, 1885, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk of the Circuit Court of the U. S., S. D. O.,
By R. C. GEORGI, *Dep.*

43½ [Endorsed:] Southern dist. of Ohio. No. 2412. Mary M. Taliaferro *et al. vs.* Jacob M. Haymaker. Writ of error. Filed May 14th, 1885. B. R. Cowen, clerk.

44 And afterwards, to wit, on the same day and year as last aforesaid, — was issued our certain citation to the said defendant aforesaid herein in the words and figures as with the return of the marshal and acknowledgement of service endorsed is hereto annexed next following to wit:

Citation.

UNITED STATES OF AMERICA, *ss:*

To Jacob M. Haymaker, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, wherein J. Hairston Seawall and others are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 14th day of May, in the year of our Lord one thousand eight hundred and eighty-fi—.

STANLEY MATTHEWS,
Associate Justice.

44½ Endorsed: United States circuit court, southern dist. of Ohio. No. 2412. Mary M. Taliaferro *et al. vs.* Jacob M. Haymaker. Citation to defendant in error. Filed May 19th, 1885. B. R. Cowen, clerk.

May 18, 1885.—Service of the within accepted.

MILLS GARDNER,
HOADLY, JOHNSON & COLSTON,
Att'ys for Jacob M. Haymaker.

Received this writ at Cincinnati, Ohio, on May 16th, 1885, and on May 18th, 1885, delivered a true copy thereof to Messrs. Hoadly, Johnson & Colston, as per acknowledgement of service above.

LOT WRIGHT,
U. S. M., S. D. O.,
By T. M. TURNER, *Deputy.*

Service	2 00
Copy	50
1 mile	06
	2 56

45 UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio:

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing writing is a true and correct transcript of the record and proceedings in the above-entitled cause as fully and completely as the same appears on file and of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court aforesaid, at Cincinnati, this 29th day of May, A. D. 1885.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*.

[Endorsed:] 2412. U. S. cir. court, south. dist. of Ohio, W. D. Mary M. Taliaferro *et al. vs.* Jacob M. Haymaker. Transcript. B. R. Cowen, cl'k.

Endorsed on cover: S. Ohio C. C. U. S. No. 244. J. Hairston Seawall *et al.*, plaintiffs in error, *vs.* Jacob M. Haymaker. Filed July 13, 1885.

127-719

127-719

SUPREME COURT OF THE UNITED STATES.

J. HAIRSTON SEAWALL ET AL.,
PLAINTIFFS IN ERROR,

No. 244. — vs. —

JACOB M. HAYMAKER,
DEFENDANT IN ERROR.

OCTOBER TERM, A. D. 1887.

RECORD.---SUPPLEMENT.

C. B. MATTHEWS,
Counsel for Plaintiffs in Error.
EDWARD COLSTON,
And MILLS GARDNER,
Counsel for Defendant in Error.

1888:
GEO. R. TOPP, Law Printer.
CINCINNATI, O.

SUPREME COURT OF THE UNITED STATES.

J. HAIRSTON SEAWALL ET AL.,
PLAINTIFFS IN ERROR,

No. 244. — vs. —

JACOB M. HAYMAKER,
DEFENDANT IN ERROR.

RECORD.---SUPPLEMENT.

AFFIDAVITS AS TO VALUE OF LAND.

In the Supreme Court of the United States.

AFFIDAVIT OF HUMPHREY JONES.

J. Hairston Seawall et al.,
Plaintiffs in Error.
versus
Jacob M. Haymaker,
Defendant in Error.
} No. 244.

State of Ohio.
Fayette County. } *ss.*

Humphrey Jones, being duly sworn, says that he is a resident of Fayette County, State of Ohio, and has been for 29 years; that he is fully acquainted with the land and farm

described in the petition in this case, now held and occupied by Jacob M. Haymaker, and has been for 20 years, said land being described as follows: All that piece or parcel of ground situate, lying and being in Fayette County, Ohio, being part of survey No. 6,538 of 437 acres, made in the name of Edward Stubblefield, beginning at the northeast corner of survey No. 6,538 for 120 acres in the name of Edward Stubblefield, thence west with the north line of said last named survey to the northwest corner thereof, thence south twenty degrees, east two hundred and twenty poles, more or less, to the southwest corner of said last named survey, thence west with the south line of the said first named survey of 437 acres forty-three and 2-10 (43.2) poles to Jane Hays' southeast corner, thence north eighteen and a half degrees, west fifty-two poles to another corner of Jane Hays, thence north sixty (60) degrees, west twenty-four poles to another corner of Jane Hays, thence west with the north line of Jane Hays one hundred and nine poles to the west line of the survey of 437 acres, thence with the said west line of said survey of 437 acres north six degrees, west two hundred and thirty-two 80-100 poles, more or less, to the southwest corner of Michael Klebber's land in the same survey, thence with said Klebber's south line two hundred and three 80-100 poles, more or less, to the east line of said survey of 437 acres, said Kiebber's southeast corner; thence south twenty degrees, west one hundred and eighteen poles to the northeast corner of said survey of 120 acres, the place of beginning, containing two hundred and ninety-two acres, more or less; that on and before the 6th day of April, A. D. 1885, said land was worth sixty-five dollars per acre, that he is fully acquainted with lands in the same neighborhood and the market value of the same, and that the above amount of sixty-five dollars per acre is a fair valuation of said land, all of which he verily believes.

HUMPHREY JONES.

Subscribed in my presence and sworn to before me by Humphrey Jones this 12th day of May, A. D. 1887.

{ NOTARIAL SEAL. }

FRANK A. CHAFFIN,
Notary Public, Fayette County, Ohio.

In the Supreme Court of the United States.

AFFIDAVIT OF DAVID MULFORD.

J. Hairston Seawall et al.,
Plaintiffs in Error.
versus
Jacob M. Haymaker,
Defendant in Error.
} No. 244.

State of Ohio,
Hamilton County, } *ss.*

David Mulford, having been first duly sworn, says that he has been a land surveyor for fifty years last past and is a resident of Union County, State of Ohio; that he has been on and over the land described in a certain petition filed in the Circuit Court of the United States for the Southern District of Ohio, by Mary M. Taliaferro and others against one Jacob M. Haymaker, seeking to eject said Haymaker from said lands, said cause being numbered 2412 and which cause is now pending in the Supreme Court of the United States, upon a writ of error sued out by the plaintiffs below to reverse a judgment in favor of the defendant below, said cause being numbered 244 on the docket of the October A. D. 1887 Term of the said Supreme Court of the United States and is entitled J. Hairston Seawall and others against Jacob M. Haymaker; that he is acquainted with said land and the measurement of its different lines and with the value

of said land and has made a plat thereof; that said land is described as follows: All that piece or parcel of ground situate, lying and being in Fayette County, Ohio, being part of survey No. 6,538 of 437 acres, made in the name of Edward Stubblefield, beginning at the northeast corner of survey No. 6,538 for 120 acres in the name of Edward Stubblefield, thence west with the north line of said last named survey to the northwest corner thereof, thence south twenty degrees, east two hundred and twenty poles, more or less, to the southwest corner of said last named survey, thence west with the south line of the said first named survey of 437 acres forty-three and 2-10 (43.2) poles to Jane Hays' southeast corner, thence north eighteen and a half degrees, west fifty-two poles to another corner of Jane Hays, thence north sixty (60) degrees, west twenty-four poles to another corner of Jane Hays, thence west with the north line of Jane Hays one hundred and nine poles to the west line of the survey of 437 acres, thence with the said west line of said survey of 437 acres north six degrees, west two hundred and thirty-two 80-100 poles, more or less, to the southwest corner of Michael Klebber's land in the same survey, thence with said Klebber's south line two hundred and three 80-100 poles, more or less, to the east line of said survey of 437 acres, said Klebber's southeast corner; thence south twenty degrees, west one hundred and eighteen poles to the northeast corner of said survey of 120 acres, the place of beginning, containing two hundred and ninety-two acres, more or less; that said tract of land just above described contains two hundred and ninety-two acres and one-half acre in excess thereof; that said land was at the time of the commencement of said suit in the said Circuit Court of the United States and at the time of the entry of the judgment therein and the suing out of the writ of error of this Court of the value of sixty-five dollars per acre, and that the one-third interest claimed by the plaintiffs herein was at all the

times just mentioned of the value of more than six thousand dollars. And further affiant saith not.

DAVID MULFORD.

Sworn to before me and subscribed in my presence this 21st day of January, A. D. 1888.

{ NOTARIAL SEAL. }

F. C. GAYMON,
Notary Public, Ham. Co. O.

127-719

127-719

SUPREME COURT OF THE UNITED STATES.

J. HAIRSTON SEAWALL ET AL.,
PLAINTIFFS IN ERROR,

No. 244. — vs. —

JACOB M. HAYMAKER,
DEFENDANT IN ERROR.

ASSIGNMENT OF ERRORS.

C. B. MATTHEWS,
Counsel for Plaintiffs in Error.

1888:
GEO. R. TOPP, Law Printer.
CINCINNATI, O.

SUPREME COURT OF THE UNITED STATES.

J. HAIRSTON SEAWALL ET AL.,

PLAINTIFFS IN ERROR,

No. 244. — vs. —

JACOB M. HAYMAKER,

DEFENDANT IN ERROR.

ASSIGNMENT OF ERRORS.

The plaintiffs in error submit the following assignment of errors committed by the Court below, as appears in the record:

First, the Court erred in admitting in evidence over the objection of these plaintiffs in error the deed set forth on page 11 of the printed record.

Second, the Court erred in charging the jury below that said deed was a good and valid conveyance of the property therein set forth, to which plaintiffs in error then and there excepted. (See pages 9 and 10 of printed record.)

Third, the Court erred in refusing to grant the motion of these plaintiffs in error for a new trial on the grounds set

forth in the first and second clauses of this assignment of errors. (See pages 7 and 8 of printed record.)

By reason of which errors of the Court below in the trial of this cause, plaintiffs in error ask that the judgment of that Court be reversed and this cause remanded for further proceedings.

C. B. MATTHEWS,
Counsel for Plaintiffs in Error.

124-419
127-719

Office Supreme Court U. S.
FILED
FEB 4 1888
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

J. H. SEAWALL ET AL.,
PLAINTIFFS IN ERROR,

No. 244. — vs. —

JACOB M. HAYMAKER,
DEFENDANT IN ERROR.

Brief for Plaintiffs in Error.

C. B. MATTHEWS,
Counsel for Plaintiffs in Error.

1888:
GEO. R. TOPP, Law Printer.
CINCINNATI, O.

SUPREME COURT OF THE UNITED STATES.

J. H. SEAWALL ET AL.,

PLAINTIFFS IN ERROR,

No. 244. — vs. —

JACOB M. HAYMAKER,

DEFENDANT IN ERROR.

Brief for Plaintiffs in Error.

This action is pending upon a Writ of Error to the Circuit Court of the United States for the Southern District of Ohio. The action below was an action of ejectment brought by the heirs of Margaret Ann Sinclair, against Jacob M. Haymaker, claiming as heirs of the said Margaret Ann Sinclair, one-third of the lands described in the petition below.

The Bill of Exceptions, is contained in the printed record, commencing at page 8. The plaintiffs offered in evidence a patent of the United States Government to the heirs of William Green Munford, and traced descent as the only heirs

at law from the said Margaret Ann Sinclair, who inherited one-third of the property as one of the three surviving heirs of said William Green Munford. J. Hairston Seawall was substituted for certain parties plaintiff, his interest being as grantee of the parties for whom he was substituted. It was admitted that the defendant was at the commencement of the suit and at the trial in possession of the premises described, and to maintain the issues on his part he offered in evidence a certain deed purporting to be a conveyance of the interest of John Sinclair and Margaret Ann Sinclair, his wife, to one Carey S. Jones, and thence traced title from Carey S. Jones to himself. A copy of this deed to Carey S. Jones, is Exhibit "B" attached to the Bill of Exceptions taken below, and is contained in the printed record commencing at page 11. The plaintiffs objected to the admission of this conveyance in evidence for the reason that it was not acknowledged in accordance with the laws of the State of Ohio, nor of the State of Virginia, in force at the date of the conveyance or of the acknowledgment. It appears from a certified copy of this deed, that Margaret Ann Sinclair executed together with her husband this deed, and that she acknowledged it on the 10th day of September, 1837; but it was not acknowledged or proven by her husband until the 14th day of May, 1840. Between those dates, to-wit, on the 13th of September, 1837, Margaret Ann Sinclair died, leaving the original plaintiffs her only heirs at law. John Sinclair, her husband, died on the 3rd of August, 1875.

The act in force at that time, regulating conveyances of land, in the State of Ohio, to-wit, the act of 1831, (1 S. & C., 457 b) contained a provision, that deeds executed and acknowledged in other States in accordance with the laws of

such State, should be effectual to pass the title to lands in the State of Ohio. (See § 5.)

The law governing conveyances at that time in the State of Virginia, where this deed was executed and acknowledged, was an act passed February 24th, 1819, and is contained in Vol. 1. Revised Code of 1819, commencing at page 361.

Section one of that Act provided:

"That no estate of inheritance or freehold or for a term of more than five years, in lands or tenements, shall be conveyed from one to another, unless the conveyance be declared by writing sealed and delivered; nor shall such conveyance be good against a purchaser for valuable consideration, not having notice thereof, or any creditor, unless the same writing be acknowledged by the party or parties, who shall have sealed and delivered it, or be proved by three witnesses to be his, her or their act, before the court of the county, city or corporation, in which the land conveyed or some part thereof lieth, or in the manner hereinafter directed, and be lodged with the Clerk of such court to be there recorded."

Section 4, of that Act, is a provision for deeds generally, and reads as follows:

"All bargains, sales and other conveyances whatsoever of any lands, tenements or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for a term of years, and all deeds of settlement upon marriage wherein either lands, slaves, money or other personal things shall be settled or covenanted to be left or paid, at the death of the party or otherwise, and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void, as to all creditors and subsequent purchasers 'for valuable consideration without notice,' unless they shall be acknowledged or proved and 'lodged with the clerk to be' recorded, according to the directions of this act; but the same, as between the parties and their heirs, 'and as to all subsequent purchasers, with notice thereof, or without valuable consideration,' shall nevertheless be valid and binding."

Sec. 15, provided for the execution and acknowledgment of deeds made by husband and wife. It is worded as follows:

"When a husband and his wife have sealed and delivered a writing, purporting to be a conveyance of any estate or interest, if she appear in court, and, being examined privily, and apart from her husband, by one of the Judges thereof, shall declare to him, that she did freely and willingly seal and deliver the said writing, to be then shewn and explained to her, and wishes not to retract it, and shall, before the said Court, acknowledge the said writing, so again shown to her to be her act, such privy examination, acknowledgment and declaration shall thereupon be entered of record in such court; and if, before any two justices of the peace, for any county or corporation, in 'any state' or territory of the United States 'or of the district of Columbia,' such married woman, being examined privily and apart from her husband, and having the writing aforesaid fully explained to her, shall acknowledge the same to be her act and deed, and shall declare that she had willingly signed, sealed and delivered the same, and that she wished not to retract it, and such privy examination, acknowledgment and declaration shall be certified by such justices, under their hands and seals, by a certificate annexed to said writing, and to the following effect, that is to say: County or Corporation, Sc: We A. B. and C. D., justices of the peace in the county (or corporation,) aforesaid, in the state, (or territory, or district,) of ———, do hereby certify that E. F., the wife of G. H., parties to a certain deed, bearing date, on the — day of ——— ——, and hereunto annexed, personally appeared before us, in our county (or corporation,) aforesaid; and being examined by us, privily and apart from her husband, and having the deed aforesaid fully explained to her, she the said E. F. acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under our hands and seals this — day of ———. A. B. [Seal.] C. D. [Seal.] And such certificate shall be offered for record to the clerk of the court, in which such deed ought to be recorded; it shall be the duty of such clerk to record the said certificate accordingly, along with the deed to which it is annexed: And, when the privy examination, acknowledgment and declaration of a married woman shall have

been so taken in court and entered of record, or certified by two magistrates, and delivered to the clerk to be recorded, and the deed also shall have been duly acknowledged or proven, as to the husband, and delivered to the clerk to be recorded, pursuant to the directions of this act, such deed shall be as effectual in law, to pass all the right, title and interest of the wife, as if she had been an unmarried woman: Provided, however, that no covenant or warranty, contained in such deed hereafter executed, shall, in any manner operate upon any *feme covert* and her heirs, further than to convey effectually, from such *feme covert* and her heirs, her right of dower, or other interest in real estate, which she may have at the date of such deed."

The foregoing act was a revision of the preceding acts of 1785 and 1792, and differed in no substantial respect from them.

The deed to Carey S. Jones, executed in Virginia, while the law from which the above sections are quoted was in force, was admitted in evidence as a valid conveyance of said property from the said Margaret Ann Sinclair. It was claimed, and apparently ruled, that the acknowledgment and record of the deed were not part of the deed itself, and that the effect of the want of acknowledgment was simply that defined by Sec. 4, above quoted. It was held to be valid without acknowledgment as between the parties themselves in accordance with the provisions of that section.

The act under discussion contains provisions for the execution, acknowledgment and recording of deeds generally, as well as special directions for the execution and acknowledgment of deeds of husband and wife. It is hardly necessary to cite authorities to the proposition, that a

deed of the husband and wife must correspond and conform to these special directions, which in this statute are devoted specially to that kind of a deed. The same rule prevails in this case as in the case of any other general and special law relating to any other subject.

Maxwell on Statutory Construction, p. 450.

While the ordinary rule is that the acknowledgment of a deed is no part of the deed itself, unless made so by the statute, and it is so provided in some states, yet, in the case of a deed of husband and wife the acknowledgment has always been regarded an essential part of the deed, arising out of the fact that at the common law a married woman had no power to part with her property by a mere conveyance. The only methods were by fine or recovery, in which case, having in view the protection of the *feme covert*, the Court privily examined her to see whether she were divesting herself of her title of her own free act and will, and without either persuasion or coercion of her husband.

In *Devlin on Deeds*, Vol. 1, Sec. 548, it is said, that "at common law a married woman had no power to make a conveyance unless by some matter of record. The only methods by which at common law she could convey her property were by fine or by common recovery. While now by statute she is permitted to convey her estate, in some states the concurrence of her husband being necessary, and in others not, yet to make her conveyance effective, the statutory provisions concerning the form and mode of her conveyance must be complied with. (Citing 2 Kent's Com., 151.) In nearly all the states, the certificate of acknowledgment of a married woman of her deed, is a material part of it and absolutely essential to its validity. The common law restriction upon her right to convey has been relaxed, still it results from such statutes as regard her acknowledgment as a part of the conveyance, that the deed is void without such acknowledgment. In a case in Illinois, Mr. Justice Caton correctly stated the rule which generally pre-

vails, and observed without such acknowledgment the deed was absolutely void, and had no more vitality than a piece of blank paper. Only by virtue of such acknowledgment and certificate could the deed become operative. Its execution could be proved in no other possible way, and in no other way could she convey. The certificate of acknowledgment of a deed from a *feme covert* to convey her own lands, is as much an essential part of the execution of the deed as her seal or signature, and without it the law presumes it was obtained by fraud or coercion." (See cases cited in note to that section.)

Under laws similar to the Virginia law, it has quite universally been held that the deed must be a joint deed of the husband and wife. In the case of *Wood vs. McIntosh*, 12 O. S. 231, it is said with reference to the Statute of Ohio, at page 242, "The statute seems to require a joint acknowledgment by the husband and wife of the deed, etc." In the case of *Ludlow vs. O'Neal*, 29 O. S. 181, it is said, "That it is not indispensible to the validity of a deed executed by the husband and wife, that they should acknowledge it before the same officer or at the same place, or that their acknowledgment should be certified by a single certificate." This does not decide that the rule of *Wood vs. McIntosh* is not correct. For, nevertheless, it must be the joint act of the parties at the time of its completion and delivery as an effective instrument; so that when it becomes a deed it must be the joint deed of the husband and wife. It is further said in the last named case "that the acknowledgment of the wife is not binding upon her until the deed is executed and acknowledged by the husband."

In the case of *Leonis vs. Lazzarovich*, 55 Cal., 52, the Court says, at page 59, referring to the alteration made in the effect and office of the acknowledgment of a deed by the Civil Code:

"The legal effect of these forms of proceedure was changed; joint execution of a conveyance by the husband and wife and the separate acknowledgment of each according to the forms prescribed were still required for the disposing of her estate. But execution, acknowledgment and *certification of acknowledgment* were no longer necessary to the validity of her conveyance. It was sufficient to pass her estate if she executed and acknowledged the conveyance thereof according to the requirements of the Civil Code."

And in *Durfee vs. Garvey*, 65 Cal., 406, it was decided, that if a deed was acknowledged by a married woman as though she were a *feme sole* it would convey no title. And wherever the subject is mentioned, the implication seems to be that the deed must be executed and acknowledged by both husband and wife. For instance, in Sec. 551 of *Devlin on Deeds*, it is said:

"Where the certificate of acknowledgment shows that the privy examination of a married woman was not taken as required by statute, she is, where the right of dower exists, entitled to recover on the death of her husband, her dower in the real estate conveyed in the deed. The acknowledgment should be made after the examination and explanation; it is not sufficient that she acknowledged the deed with her husband, and it was subsequently fully explained to her and she declared that she had executed it voluntarily and did not desire to retract it. And at another place, it is said, that the mere fact that a separate or privy examination is required would be sufficient to indicate that there must be a joint execution and acknowledgment of the deed."

In *Moore vs. Rake*, 36 N. J. L. Rep., 574, it is said:

"Previous to the year 1743, a *feme covert* could not make a valid conveyance of her interest in land in the then colony of New Jersey. By the act of December 3rd, of that year, it was enacted 'that all deeds or conveyances made, or to be made, by a man and his wife of the estate of the wife or the right of dower of the wife,' when acknowledged in a particular manner before certain officers, should be recorded, and should be good and sufficient to convey the lands thereby intended to be conveyed. It is true the act does not, in terms, declare that the deed shall be the *joint* deed of the

husband and wife, but it plainly implies this, and such is its natural and fair construction."

The act under discussion in that case made no change in the particular language under discussion, and it was consequently held, that it required the joint deed of the husband and wife. And in quoting from a text writer, the Court adopts this language:

"The general opinion has always been that the husband must join in the execution of the conveyance upon the principles of the common law, that a wife can do no valid act in respect to property in which the husband has an interest without he is privy and party to it; and from the mischievous consequences that might result from allowing the wife to convey her real estate as if she were a *feme sole*, and without, or even against, the consent of her husband. It is supposed the act can receive this construction and in reality that the expressions imply that the husband is a party to the deed under execution as she is to be *privately examined apart* from him."

The Court cites the case of *Liddel vs. Arrowsmith*, decided in 1832 in the Circuit Court of the United States, in the District of New Jersey by Mr. Justice Baldwin who "would not admit in evidence to the jury a deed executed by the wife alone, although it was executed with the consent of her husband who had himself executed a prior deed for the land to the same grantee." See also, cases of *Fowler vs. Shearer*, 7 Mass., 14; *Colcord et al. vs. Swan and wife*, 7 Mass., 291; *Beale vs. Knowles*. 45 Me., 479; *Strickland vs. Bartlett*, 51 Me., 355. In the latter case it is said, that in that state the husband and wife may now make separate deeds; but the court defines the word "conveyance" as used in the statute to mean all the instruments completing the act of conveying the title; therefore, if those deeds be separate, they in law constitute but the one conveyance.

See also *Baxter vs. Bodkin*, 25 Ind., 172. It will be observed that the statute provides for the execution and acknowledgment of the deed by the wife and then further provides that when a deed is also acknowledged or proven by the husband it shall be effectual to convey the title to her property. The plain construction of this statute is, that it is not so effectual until the husband has acknowledged or proven the execution of the deed on his part.

Two questions arise under this statute, having reference to the facts of this case. First, what was the effect of this deed executed as it apparently was, by the husband and wife, and acknowledged by the wife alone. Secondly, was any validity added to the deed by the acknowledgment of the husband after the wife's death. If by this statute the acknowledgment is a part of the deed and is essential to its validity, as a deed of the wife, and if the statute requires not only execution by the husband, but also his acknowledgment, then the omission of his acknowledgment is an omission of a plain provision of the statute, essential to the validity of the deed even as an act of the wife. Under such circumstances, the deed has plainly not been executed in accordance with the statute, and is therefore void.

It is said in *Schouler on Husband and Wife*, sec. 175:

"In some states the separate conveyance of a married woman, or her execution jointly with her husband, and without observance of the full statute formalities, is void;" (citing among a large number of other authorities, *Cincinnati vs. Newell*, 7 O. S., 37:)

"But in others such irregularities are not held fatal to the instrument, and she is furthermore bound on the usual principles, even though her deed be separate from that of her husband and executed at a different time. The question in such cases is mainly one of statute construction, and as to formalities a distinction may be taken between mere

errors of description or literal informalities of execution or acknowledgment on the one hand, and on the other, the disregard of some statutory requirement, so as to substantially violate public policy, such for instance, as her separate acknowledgment or her declaration before a magistrate that she executed freely and understandingly, for the purpose specified."

In the case of *Trimmer vs. Heagy*, 16 Pa. St., 484, the deed was held void in which the husband did not join, although it was separately acknowledged in due form and it was held that evidence that the deed was executed with the consent and direction and authority of the husband, was properly excluded.

See also, *Dunham vs. Wright*, 53 Pa. St., 167.
Glidden vs. Strupler, 2 P. F. Smith, 400.
Warner vs. Crouch, 14 Allen, 163.
Gerrish vs. Mason, 4 Gray, 432.
Palmer vs. Paine, 9 Gray, 56.
Hodge vs. Hollingshead, 6 Minn., 25.
Annon vs. Folsom, 6 Minn., 500.
Lane vs. Soulard, 15 Ill., 123.
Mariner vs. Saunder, 5 Gil., 113.
Cole vs. Van Riper, 44 Ill., 58.
Grapengather vs. Fejergary, 9 Ia., 163.
Muller vs. Wetherby, 12 Ia., 415.

If this deed was void as long as it remained unacknowledged by the husband, was it capable of being made a valid conveyance by the acknowledgment of the husband after the death of the wife? And will that acknowledgment relate back to the time when the wife completed her part of it? This question must be answered in the negative; as it remained without the acknowledgment of the husband it was void at the death of the wife, and an interest thereupon

attached which can not be divested by any act of the husband. It can not relate back, because the doctrine of relation only applies in a case where an act has been done, though imperfectly. It can not relate back to something that is no act at all; the attempted conveyance was utterly void. It can not take effect as of the time of the acknowledgment of the husband, because his acknowledgment according to the statute, or under the statute, was necessary in order to make it a valid act of the wife, and it must have been capable at the time it was perfected of being her valid act. It must have been the act of one capable of doing the act. The ratification must be made by the same person who assumed to bind himself or herself originally.

For instance, in the case of *Jackson vs. Stevens*, 16 Johns., 110, where the wife acknowledged a deed purporting to convey her own property several years after her husband's death, it was held that it did not convey her interest.

In *DePeyster vs. Howland*, 8th Cow., 277, it is said that:

"The deed of a *feme covert* is void at common law, not merely voidable; and though she acknowledges the execution after her husband's death, this shall not relate to the time of the original execution. It can be made operative only in virtue of an acknowledgment under the Statute. But her acknowledgment of the deed after the husband's death, shall pass her right in the land, for it gives effect to the old deed as an original conveyance from the time of the acknowledgment."

At page 285, it is said:

"On the question of relation, I cannot accede to the position of defendant's counsel. In all cases where a subsequent act is held to relate back to a thing antecedent, there must be something to which relation may be had—something inchoate, imperfect; but still something. I shall not go into the examination of the cases, but I think I hazard nothing in the assertion that in none of them was relation had to a *void* act."

In *Jackson vs. Stevens*, (16 Johns. 110) Spencer, Justice, speaking of a deed executed by a *feme covert* under similar circumstances, says:

"It is contended, however, that the acknowledgment of the deed by Mrs. B. in October, 1814, related back to the date of the deed (it was dated in 1795) and rendered it valid from the beginning. But although she signed and sealed the instrument it was not her deed until she had acknowledged it according to the statute. It could not bind her as a contract. She was not confirming an inchoate and imperfect agreement. The deed took its efficacy from the period of her acknowledgment and there was nothing prior to which it could relate."

In *Smith vs. Shackelford*, 9 Dana, 453, 476, where a deed was void on account of the lack of authentication and the wife's execution, it was held that it might be confirmed by re-delivery after the husband's death.

And in *Schoenberger vs. Zook*, 34 Pa. St., 24, it was held that:

"A deed executed by husband and wife for lands of the wife, but not delivered in her lifetime, cannot be rendered effectual to pass the estate as against the heirs of the wife after her decease."

In *Leggatt vs. Clark*, 111 Mass., 308, where the statute provided that in case the husband was a lunatic, any conveyance of a married woman of her separate property should not be valid "without the assent of her husband in writing, or his joining with her in the conveyance, or the consent of one of the Judges of the Supreme Judicial Court, Superior Court, or the Probate Court, granted on her petition in any county, on account of the sickness, insanity or absence from the state, of her husband or other good cause," the question was as to the validity of a deed executed by husband and wife at a time when the husband was *non compos*, without

the consent of one of the before mentioned Judges. The Court says:

"Since the enactment of this statute, it has always been held that the deed of a married woman, executed by her alone, and without the assent of her husband or one of the Judges of the three courts named, is wholly inoperative and void. In the case at bar the husband joined in the deed of conveyance; but the jury have found that at the time he did so, he was insane."

It was ruled in this case that the deed was void. The Court says:

"The deed was void to the same extent as if there had been no assent by the husband and no subsequent action or failure to act on his part could give it validity. The cases cited by the tenant to the point that the deed or other contract of an insane person is voidable only and may be ratified by him after he becomes sane, do not apply to this case. No subsequent assent or ratification by the husband could fulfil the requirements of the statute or give validity to the deed as a deed of the wife."

In the case of *Lawrence vs. Heister*, 3 Harris & Johns, 371, it was held, that at the common law a wife had no way of transferring her property by conveyance; that under the act of 1765, where the wife was to convey her interest, it was held that she must join with the husband in the conveyance in order to pass her interest and the conveyance must be acknowledged by the husband; that they must not only join as grantors, but the husband must also acknowledge the deed. It was accordingly held where the husband and wife lived in Pennsylvania and by deed dated February 10th, 1782, conveyed certain lands of the wife, situated in Maryland, and it was acknowledged by the wife in accordance with the laws of the State of Maryland, and it was also acknowledged by the husband, but his acknowledgment was invalid in Maryland, because there was no law in the latter

State, authorizing the husband, though a non-resident, to acknowledge a deed so as to pass lands in that state, before any officer or tribunal out of the state. The laws of Maryland discussed in this case, were the law of 1715, *1st Dorsey's Laws*, page 40, and the law of 1766, *1st Dorsey's Laws*, page 112.

The case of *Dewey vs. Campau*, 4 Mich., 565, decides that the revised statutes of Michigan of 1838, (page 258) required that to deeds by husband and wife of her real estate, there should be an acknowledgment of both, etc., and at page 567, it is said that "the deed of a *feme covert* conveying her interest in lands which she owns in fee, does not pass her interest by the force of its execution and delivery as in the common case of a deed by a person under no legal disability. * * * * The deed of a *feme covert* being void at common law, is a nullity, unless acknowledged in strict compliance with the statute. The acknowledgment as to her is a part of the deed."

In *Dow vs. Jewell*, 21 N. H. (1 Foster,) 470, it is said in the syllabus:

"Whether upon the division of lands among the heirs to an estate, the deed of one of them, who is a married woman, being invalid because it was executed without her husband and signed with her maiden name, could be subsequently confirmed by her? Quaere. But the deed of her husband after her death, releasing his interest in the lands and assenting to a division, and intended to confirm her deed, would not be a confirmation of it so as to give it validity."

It is said at page 489:

"But however the law might be held if Mrs. Merrill were living and should confirm her deed, or attempt to do so, her husband can not by a deed executed since her decease, give any validity to her conveyance. If her deed could be confirmed, it must be by her alone. The only effect of his

deed would be to transfer to the grantee such rights to the land as he acquired by the coverture, and her title to the land descended to her children."

In *Kottman vs. Ayer*, 1 Strobhart's L. R., 552, it was plainly intimated, though probably not necessary to the decision of the case, that the deed of a married woman must take effect as a complete deed in the lifetime of both husband and wife.

In *Stiles vs. Probst*, 69 Ill., 382, it was held that until the deed is complete, so far as execution and acknowledgment is concerned, it is not in a condition for delivery; and "where a deed or mortgage purporting on its face to be the joint instrument of the grantor and his wife, but which in fact was not executed by the latter, was recorded by the grantor, and retained by him for several years thereafter, when the same was executed and acknowledged by the wife and then delivered; it was held from the fact that it was the intention of both parties, that the instrument was to be executed by the wife, that it could not be regarded as delivered until after its execution by the wife."

In *Schouler on Husband and Wife*, Sec. 174, it is said:

"And a deed in order to bind the wife's heirs, must have been delivered as well as executed during her lifetime. Nor can her husband, after her decease, as against such heirs, confirm a conveyance which was fatally irregular on her part."

In the case of the *Agricultural Bank of Mississippi vs. Rice et al.*, 4 How., 225, it was held that

"a bond for the conveyance of land does not transfer the legal title, etc., and that such bond when signed by a married woman neither confers a legal or equitable right upon the obligees. In order to convey by grant, the party possessing the right must be the grantor and use apt and proper words to convey

to the grantee. If, therefore, the title to land is in married women and the deed for the land recites the names of the husbands as grantors, purporting to convey in right of their wives, the deed is insufficient to convey the title of the wives. Nor is such a deed made effective by its being signed and sealed by the wives. The receipt of money subsequently by the female grantors, does not pass the legal title nor give effect to a deed, which as to them, is utterly void."

In the case of *Rhea and others vs. Rhenner*, 1 Pet., 105, it was held that the deed of a married woman without joining her husband was inoperative and void.

Elliott vs. Lessee of Piersol, 1 Pet., 328, decides that "in Virginia and Kentucky, the means of conveyance by fine and common recovery have never been in common use; and in these states, the capacity of a *feme covert* to convey her estate by deed is the creature of the statute law; and to make her deed effectual, the forms and solemnities prescribed by the statutes must be pursued." In this case it is held, that the acts of a married woman in the conveyance of her estate, unless in conformity with the statute are absolutely void *ab initio*.

Chief Justice Taney, says:

"And as to the receipt of the money mentioned in the testimony, after they become sole, it certainly could not operate as a legal conveyance, passing the estate of the grantee, nor give effect to a deed which as to them was utterly void."

See, *Langhorne vs. Hobson*, 4 Leigh (Va.), 224, where the procedure touching the execution and record of a deed of a husband and wife, is detailed as it existed under the law of 1792.

In *Harkins vs. Forsyth*, 11 Leigh, Va., 294, at page 305, Tucker, Judge, says:

"The first part of the clause provides that if the wife being examined, shall acknowledge the deed, and such examination and acknowledgment be certified, and such certificate be offered for record, it shall be recorded. Here the clause loses its hypothetical *if* and proceeds: 'And *when* the privy examination, acknowledgment and declaration of a married woman shall have been so taken in Court, and entered of record or certified by two magistrates and delivered to the clerk to be recorded, and the deed also shall have been duly acknowledged or proven as to the husband, and delivered to the clerk to be recorded, pursuant to the directions of this act, such deed shall be as effectual in law to prove all the rights, title and interest of the wife, as if she had been an unmarried woman.'—Here then it is expressly provided, that when the examination shall have been certified and delivered to the clerk, etc., the deed shall be as effectual as if the maker were sole. The deed then is made to depend not upon the *truth* of the certificate, but upon its existence and its delivery to the clerk; and if so, the enquiry whether it be true or false is an immaterial enquiry."

Sexton vs. Pickering, 3 Randolph, 468. In this case the deed of the husband and wife was executed in Pennsylvania; but under the act of 1814, a non-resident husband was not authorized to acknowledge before an officer of another State his execution of a deed, and consequently it was held void although it was executed by him; the proof by a certain unauthorized officer was insufficient to establish the fact. The Court at the end of the opinion says:

"It may not be improper to observe, that as it appears by sufficient evidence that the deed was executed by Mrs. Pickering it would be completely valid as to her, if it had appeared by the testimony, of even a single witness, that it had been executed by her husband also."

The answer in this case sets up the statute of limitations, to which as being surplusage, no reply was necessary.

Kyser vs. Cannon, 29 Oh. St., 359.

Rhodes vs. Gunn, 35 Oh. St., 387.

As for this defence, the statute does not begin to run until the death of the husband, which occurred in 1875, as the heirs could not bring an action in ejectment until that time.

Koltenbrock vs. Cracraft, 36 Oh. St., 585.

Thompson's Heirs' Lessee vs. Green, 4 Oh. St., 217.

Clark vs. Clark, 20 Oh. St., 128.

I submit therefore that for the error of the Court in admitting the deed in question in this case in evidence and for error of the Court in charging the jury that the same was a good and valid conveyance of the lands therein described, the judgment of the Court below should be reversed.

Respectfully Submitted,

C. B. MATTHEWS.

Counsel for Plaintiffs in Error.

See affidavit as to value on next page.

In the Supreme Court of the United States.

AFFIDAVIT AS TO VALUE OF LAND.

J. Hairston Seawall et al.,
Plaintiffs in Error.
versus
Jacob M. Haymaker,
Defendant in Error.
} No. 244.

State of Ohio,
Fayette County, } *ss.*

Humphrey Jones, being duly sworn, says that he is a resident of Fayette County, State of Ohio, and has been for 29 years; that he is fully acquainted with the land and farm described in the petition in this case, now held and occupied by Jacob M. Haymaker, and has been for 20 years, said land being described as follows: All that piece or parcel of ground situate, lying and being in Fayette County, Ohio, being part of survey No. 6,538 of 437 acres, made in the name of Edward Stubblefeld, beginning at the northeast corner of survey No. 6,538 for 120 acres in the name of Edward Stubblefeld, thence west with the north line of said last named survey to the northwest corner thereof, thence south twenty degrees, east two hundred and twenty poles, more or less, to the southwest corner of said last named survey, thence west with the south line of the said first named survey of 437 acres forty-three and 2-10 (43.2) poles to Jane Hays' southeast corner, thence north eighteen and a half degrees, west fifty-two poles to another corner of Jane Hays, thence north sixty (60) degrees, west twenty-four poles to another corner of Jane Hays, thence west with the north line of Jane Hays one hundred and nine poles to the west line of the survey of 437 acres, thence with the said west line of said survey of 437 acres north six degrees, west two hundred and thirty-two 80-100 poles, more or less, to the southwest corner of Michael Klebber's land in the same survey, thence with said

Klebber's south line two hundred and three 80-100 poles, more or less, to the east line of said survey of 437 acres, said Klebber's southeast corner; thence south twenty degrees, west one hundred and eighteen poles to the northeast corner of said survey of 120 acres, the place of beginning, containing two hundred and ninety-two acres, more or less; that on and before the 6th day of April, A. D. 1885, said land was worth sixty-five dollars per acre, that he is fully acquainted with lands in the same neighborhood and market value of the same, and that the above amount of sixty-five dollars per acre is a fair valuation of said land, all of which he verily believes.

HUMPHREY JONES.

Subscribed in my presence and sworn to before me by Humphrey Jones this 12th day of May, A. D. 1887.

{ NOTARIAL SEAL. }

FRANK A. CHAFFIN,
Notary Public, Fayette County, Ohio.